

Banking and Finance Law Daily Wrap Up, CONSUMER FINANCIAL PROTECTION BUREAU—Kirkland & Ellis partner selected to advocate CFPB constitutionality, (Oct. 28, 2019)

Banking and Finance Law Daily Wrap Up

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By [Richard A. Roth, J.D.](#)

Former Solicitor General Paul D. Clement has been asked by the Supreme Court to argue that the CFPB's independent single-director structure does not violate constitutional separation-of-powers principles.

Paul D. Clement, a partner in Kirkland & Ellis's Washington, D.C., office and a former U.S. Solicitor General, has been selected by the Supreme Court to make the argument in *Seila Law, LLC v. CFPB* that the Consumer Financial Protection Bureau's organization is constitutional. An *amicus curiae* is needed because the Justice Department and the Bureau itself are taking the position that the CFPB's structure, which includes a single director who can be removed by the president only for cause, interferes with presidential powers to an extent that the constitution's separation of powers principle has been violated. Clement's selection was announced in an [Oct. 23, 2019, order](#).

Clement became Solicitor General during the George W. Bush administration. According to the law firm's website, he has argued more than 95 cases before the Court.

Three distinct positions will be presented to the Court:

1. *Seila Law* will argue that the CFPB's organization is not only unconstitutional but irremediable, which would void the Dodd-Frank Act's creation of the Bureau.
2. The Justice Department will argue that the organization is unconstitutional but that the defect can be cured by severing the Dodd-Frank Act section that allows the president to remove the director only for cause. This would leave the Bureau's regulatory, supervisory, and enforcement powers intact but transform the Bureau from an independent agency to an executive branch agency.
3. Clement, as *amicus curiae*, will argue that the Ninth Circuit's opinion should be affirmed, leaving the CFPB as it was created by the Dodd-Frank Act.

A date for oral arguments has not yet been set.

The case is [No. 19-7](#).

Companies: Kirkland & Ellis; Seila Law, LLC

Attorneys: Paul D. Clement (Kirkland & Ellis).

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